

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

EMC Corporation and  
EMC Israel Development Center, Ltd.,

Plaintiffs,

v.

Zerto, Inc.

Defendant.

Civil Action No. 12-956-GMS

**VERDICT FORM**

**I. PATENT INFRINGEMENT**

**A. Infringement of U.S. Patent Number 7,577,867 ("the '867 patent")**

- 1. Has EMC proven, by a preponderance of the evidence, that Zerto has directly infringed claim 45 of the '867 patent?**

*Checking "yes" below indicates a finding for EMC.*

*Checking "no" below indicates a finding for Zerto.*

Yes ✓ No                     

- 2. Has EMC proven, by a preponderance of the evidence, that at least one of Zerto's customers has directly infringed claim 45 of the '867 patent?**

*Checking "yes" below indicates a finding for EMC.*

*Checking "no" below indicates a finding for Zerto.*

Yes                      No ✓

**Please answer question 3 only if you answered "Yes" to question 2.**

- 3. Has EMC proven, by a preponderance of the evidence, that Zerto has induced at least one customer's direct infringement of claim 45 of the '867 patent?**

*Checking "yes" below indicates a finding for EMC.*

*Checking "no" below indicates a finding for Zerto.*

Yes                      No                     

- 4. If you answered "Yes" to Question 1 or 3, has EMC proven, by clear and convincing evidence, that the infringement was willful?**

Yes                      No ✓

**B. Infringement of U.S. Patent Number 7,467,460 (the '460 patent)**

- 1. Has EMC proven, by a preponderance of the evidence, that at least one of Zerto's customers has directly infringed any Asserted Claim of the '460 patent?**

*Checking "yes" below indicates a finding for EMC.*

*Checking "no" below indicates a finding for Zerto.*

Yes ✓ No                     

If you answered "Yes," please mark the claim(s) you found to be infringed:

Claim 1:            Claim 38: ✓ Claim 42:            Claim 44:           

**Please answer questions 2 and 3 only if you answered "Yes" to question 1.**

- 2. Has EMC proven, by a preponderance of the evidence, that Zerto has induced at least one customer's direct infringement of any Asserted Claim of the '460 patent?**

*Checking "yes" below indicates a finding for EMC.*

*Checking "no" below indicates a finding for Zerto.*

Yes                      No ✓

If you answered "Yes," please mark the claim(s) you found to be infringed:

Claim 1:            Claim 38:            Claim 42:            Claim 44:           

- 3. Has EMC proven, by a preponderance of the evidence, that Zerto has contributed to at least one customer's direct infringement of any Asserted Claim of the '460 patent?**

*Checking "yes" below indicates a finding for EMC.*

*Checking "no" below indicates a finding for Zerto.*

Yes ✓ No                     

If you answered "Yes," please mark the claim(s) you found to be infringed:

Claim 1:            Claim 38: ✓ Claim 42:            Claim 44:

**C. Infringement of U.S. Patent Number 6,073,222 (the '222 patent)**

- 1. Has EMC proven, by a preponderance of the evidence, that at least one of Zerto's customers has directly infringed claim 1 of the '222 patent?**

*Checking "yes" below indicates a finding for EMC.*

*Checking "no" below indicates a finding for Zerto.*

Yes \_\_\_\_\_ No ✓ \_\_\_\_\_

**Please answer questions 2 and 3 only if you answered "Yes" to question 1.**

- 2. Has EMC proven, by a preponderance of the evidence, that Zerto has induced at least one customer's direct infringement of claim 1 of the '222 patent?**

*Checking "yes" below indicates a finding for EMC.*

*Checking "no" below indicates a finding for Zerto.*

Yes \_\_\_\_\_ No \_\_\_\_\_

- 3. Has EMC proven, by a preponderance of the evidence, that Zerto has contributed to at least one customer's direct infringement of claim 1 of the '222 patent?**

*Checking "yes" below indicates a finding for EMC.*

*Checking "no" below indicates a finding for Zerto.*

Yes \_\_\_\_\_ No \_\_\_\_\_

**D. Infringement of U.S. Patent Number 7,603,395 (the '395 patent)**

- 1. Has EMC proven, by a preponderance of the evidence, that at least one of Zerto's customers has directly infringed any Asserted Claim of the '395 patent?**

*Checking "yes" below indicates a finding for EMC.*

*Checking "no" below indicates a finding for Zerto.*

Yes ✓ No                     

If you answered "Yes," please mark the claim(s) you found to be infringed:

Claim 1:            Claim 2: ✓ Claim 8:           

**Please answer questions 2 and 3 only if you answered "Yes" to question 1.**

- 2. Has EMC proven, by a preponderance of the evidence, that Zerto has induced at least one customer's direct infringement of any Asserted Claim of the '395 patent?**

*Checking "yes" below indicates a finding for EMC.*

*Checking "no" below indicates a finding for Zerto.*

Yes                      No ✓

If you answered "Yes," please mark the claim(s) you found to be infringed:

Claim 1:            Claim 2:            Claim 8:           

- 3. Has EMC proven, by a preponderance of the evidence, that Zerto has contributed to at least one customer's direct infringement of any Asserted Claim of the '395 patent?**

*Checking "yes" below indicates a finding for EMC.*

*Checking "no" below indicates a finding for Zerto.*

Yes ✓ No                     

If you answered "Yes," please mark the claim(s) you found to be infringed:

Claim 1:            Claim 2: ✓ Claim 8:

**E. Infringement of U.S. Patent Number 7,791,091 (the '091 patent)**

- 1. Has EMC proven, by a preponderance of the evidence, that at least one of Zerto's customers has directly infringed any Asserted Claim of the '091 patent?**

*Checking "yes" below indicates a finding for EMC.*

*Checking "no" below indicates a finding for Zerto.*

Yes ✓ No                     

If you answered "Yes," please mark the claim(s) you found to be infringed:

Claim 1:            Claim 5: ✓

**Please answer questions 2 and 3 only if you answered "Yes" to question 1.**

- 2. Has EMC proven, by a preponderance of the evidence, that Zerto has induced at least one customer's direct infringement of any Asserted Claim of the '091 patent?**

*Checking "yes" below indicates a finding for EMC.*

*Checking "no" below indicates a finding for Zerto.*

Yes                      No ✓

If you answered "Yes," please mark the claim(s) you found to be infringed:

Claim 1:            Claim 5:           

- 3. Has EMC proven, by a preponderance of the evidence, that Zerto has contributed to at least one customer's direct infringement of any Asserted Claim of the '091 patent?**

*Checking "yes" below indicates a finding for EMC.*

*Checking "no" below indicates a finding for Zerto.*

Yes ✓ No                     

If you answered "Yes," please mark the claim(s) you found to be infringed:

Claim 1:            Claim 5: ✓

## VALIDITY

### F. Validity of U.S. Patent Number 7,467,460 (the '460 patent)

1. **Has Zerto proven, by clear and convincing evidence, that any Asserted Claim of the '460 patent is anticipated by a single prior art reference?**

*Checking "yes" below indicates a finding for Zerto.*

*Checking "no" below indicates a finding for EMC.*

Yes \_\_\_\_\_

No ☒ \_\_\_\_\_

If you answered "Yes" to this question, please mark the claim(s) you found to be anticipated:

Claim 1: \_\_\_\_\_ Claim 38: \_\_\_\_\_

Claim 42: \_\_\_\_\_ Claim 44: \_\_\_\_\_

2. **Has Zerto proven, by clear and convincing evidence, that any Asserted Claim of the '460 patent would have been obvious at the time of the invention to a person of ordinary skill in the art?**

*Checking "yes" below indicates a finding for Zerto.*

*Checking "no" below indicates a finding for EMC.*

Yes \_\_\_\_\_

No ☒ \_\_\_\_\_

If you answered "Yes" to this question, please mark the claim(s) you found to be obvious:

Claim 1: \_\_\_\_\_ Claim 38: \_\_\_\_\_

Claim 42: \_\_\_\_\_ Claim 44: \_\_\_\_\_

**G. Validity of U.S. Patent Number 6,073,222 (the '222 patent)**

- 1. Has Zerto proven, by clear and convincing evidence, that claim 1 of the '222 patent is anticipated by a single prior art reference?**

*Checking "yes" below indicates a finding for Zerto.*

*Checking "no" below indicates a finding for EMC.*

Yes \_\_\_\_\_

No ☒ \_\_\_\_\_



**H. Validity of U.S. Patent Number 7,603,395 (the '395 patent)**

- 1. Has Zerto proven, by clear and convincing evidence, that any Asserted Claim of the '395 patent would have been obvious at the time of the invention to a person of ordinary skill in the art?**

*Checking "yes" below indicates a finding for Zerto.*

*Checking "no" below indicates a finding for EMC.*

Yes \_\_\_\_\_ No ✓ \_\_\_\_\_

If you answered "Yes" to this question, please mark the claim(s) you found to be

obvious:

Claim 1: \_\_\_\_\_ Claim 2: \_\_\_\_\_ Claim 8: \_\_\_\_\_

**I. Validity of U.S. Patent Number 7,791,091 (the '091 patent)**

- 1. Has Zerto proven, by clear and convincing evidence, that any Asserted Claim of the '091 patent would have been obvious at the time of the invention to a person of ordinary skill in the art?**

*Checking "yes" below indicates a finding for Zerto.*

*Checking "no" below indicates a finding for EMC.*

Yes \_\_\_\_\_

No  \_\_\_\_\_

If you answered "Yes" to this question, please mark the claim(s) you found to be

obvious:

Claim 1: \_\_\_\_\_ Claim 5: \_\_\_\_\_

## **II. DAMAGES**

- 1. If you found that Zerto infringed at least one Asserted Claim of any Asserted Patent(s), and that the infringed claim(s) was not invalid, state the amount of damages that you find EMC has proven it is entitled to by a preponderance of the evidence.**

Damages: \$ 585,783.00

**SEALED**